

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Waiver of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Port Angeles School District 121)	File Nos. SLD-233361, 237708
Port Angeles, Washington)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: January 14, 2003

Released: January 15, 2003

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division is a Request for Waiver by Port Angeles School District 121 (Port Angeles), Port Angeles, Washington.¹ Port Angeles requests a waiver of the filing deadline of October 28, 2001 for filing FCC Forms 486 in Funding Year 2001 of the schools and libraries universal service support mechanism.² For the reasons set forth below, the Request for Waiver is denied.

2. The Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) administers the schools and libraries support mechanism under the direction of the Commission.³ After an applicant for discounted services under the schools and libraries support mechanism has entered into agreements for eligible

¹ Facsimile from Jim Bennett, Olympic Peninsula Consultants, on behalf of Port Angeles School District 121, to Federal Communications Commission, filed July 2, 2002 (Request for Waiver).

² Request for Waiver. In prior years, Funding Year 2001 was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 2001 and ended on June 30, 2002, is now called Funding Year 2001. The funding period that began on July 1, 2002 and ends on June 30, 2003 is now known as Funding Year 2002, and so on.

³ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998).

services with one or more service providers, it must file with SLD an FCC Form 471 application.⁴ The FCC Form 471 notifies SLD of the services that have been ordered and supplies an estimate of funds needed to cover the discounts to be given for eligible services.⁵ SLD then issues a funding commitment decision letter indicating the discounts, if any, to which the applicant is entitled. After the funding year begins and the discounted service commences, the approved recipient of discounted services submits to SLD an FCC Form 486, which indicates that the service has begun and specifies the service start date.⁶ After receiving the FCC Form 486, SLD will accept invoices from the service provider and issue disbursements to the provider in cumulative amounts up to the amount of the discount awarded.⁷ Under the “120 day rule,” an applicant must submit its FCC Form 486 for a service no later than 120 days after the commencement of the service or the issuance of SLD’s funding decision, whichever is later.⁸ If an applicant files its FCC Form 486 after this 120 day period, the date 120 days before the filing of the FCC Form 486 becomes the service start date for funding purposes.⁹

3. With the passage of the Children’s Internet Protection Act (CIPA), Congress amended section 254 of the Act, imposing new conditions on schools and libraries that “hav[e] computers with Internet access” and request discounted services under the schools and libraries universal service support mechanism.¹⁰ Under section 254(h)(5), no school, except for schools that seek only discounts on telecommunications services, may receive universal service discounts unless the authority with responsibility for administration of the school makes certain certifications, and ensures the use of computers with Internet access in accordance with the certifications.¹¹

4. In accordance with CIPA’s requirement that applicants in Funding Year 2001 make their certifications within 120 days of the start of the funding year, the Commission added an additional deadline to the normal 120 day rule for FCC Forms 486. Under CIPA, Funding Year 2001 applicants were required to file their FCC Forms 486 by no later than October 28,

⁴ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

⁵ 47 C.F.R. § 54.504(c).

⁶ Schools and Libraries Universal Service, Receipt of Service Confirmation Form, OMB 3060-0853 (July 2001) (FCC Form 486); Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (July 2001) (Form 486 Instructions). In addition, an early filing option exists for Funding Year 2001 applicants whose services begin on or before October 28, 2001 and for applicants in subsequent funding years whose services begin on or before July 1 of the funding year. See FCC form 486.

⁷ See FCC Form 486; Form 486 Instructions.

⁸ See Form 486 Instructions at 8-12.

⁹ *Id.*

¹⁰ 47 U.S.C. §§ 254(h)(5), (h)(6).

¹¹ 47 U.S.C. §§ 254(h)(5)(A), (h)(5)(A)(ii). Hereinafter we will refer collectively to all of the persons specified in the statute as responsible for making these certifications on behalf of participating schools and libraries as “entities.”

2001 unless their service began after that date or a funding commitment decision letter issued after that date.¹² A Funding Year 2001 applicant with a funding commitment decision letter who failed to meet the October 28, 2001 deadline could obtain discounts only for services received on or after the date that its FCC Form 486 was postmarked.¹³

5. In the instant case, Port Angeles asserts that the October 28, 2001 deadline has caused it to lose all of its funding, and seeks a waiver of the deadline.¹⁴ SLD issued two Funding Commitment Decision Letters to Port Angeles, granting its Funding Year 2001 applications, on August 7, 2001 and August 20, 2001, respectively.¹⁵ On June 26, 2002, a new staff member inquired with other personnel as to the status of the application, and was told that it was not funded.¹⁶ The new staff determined from SLD's web site that the application had, in fact, been funded.¹⁷ Port Angeles asserts, however, that no one there, including the application contact person, had seen a Funding Commitment Decision Letter.¹⁸ Port Angeles contacted SLD and was told that it was no longer eligible for funding.¹⁹ Port Angeles then filed the pending Request for Waiver, asking that the funding be reinstated.²⁰ It has not yet filed an FCC Form 486.

6. We find that the request for a waiver must be denied. We need not discuss whether the CIPA October 28, 2001 deadline should be waived. Because Port Angeles has never submitted an FCC Form 486 and its services were completed more than 120 days ago, it is barred from receiving any discounts even under the normal 120-day rule. Further, we find that a waiver of the 120-day rule is not warranted in this case.

7. The Commission may waive provisions of its rules, but only where special circumstances warrant a deviation from the general rule, and strict compliance with the rule would be inconsistent with the public interest.²¹ Port Angeles asserts that it should receive a

¹² 47 U.S.C. §§ 254(h)(5)(E), 254(h)(6)(E); *CIPA Order*, 16 FCC Rcd at 8188-89, 8191, paras. 10, 18.

¹³ See Form 486 Instructions at 9.

¹⁴ Request for Waiver at 1-2.

¹⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Steve Baxter, Port Angeles School District 121, dated August 7, 2001; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Steve Baxter, Port Angeles School District 121, dated August 20, 2001.

¹⁶ Request for Waiver at 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* We note that, technically, Port Angeles still retained a *de minimus* amount of funding on June 26, 2002. Specifically, it could still have obtained discounts on telecommunications services received between June 27 and June 30, 2002. However, because it has not filed an FCC Form 486 up to the present, it has lost its funding entirely.

²⁰ *Id.*

²¹ 47 C.F.R. § 1.3; see also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

waiver because its Funding Year 2001 contact person indicated that “no one had seen the funding commitment decision letters.”²² However, the record demonstrates that SLD issued its Funding Commitment Decision Letters on August 7 and August 20, 2001.²³ The Commission has held repeatedly that an item mailed is presumed to be received by the addressee, and Port Angeles has not provided sufficient evidence to rebut this presumption.²⁴ Further, Port Angeles could have become aware of its application status in a timely fashion even without the Funding Commitment Decision Letter by periodically checking SLD’s website (as one of its staff personnel eventually did) or contacting SLD directly.²⁵ Either method would have apprised it of the funding decision in time to meet all applicable deadlines. Thus, we find that Port Angeles has not demonstrated circumstances warranting a deviation from the general rule.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Waiver filed by Port Angeles School District 121, Port Angeles, Washington, on July 2, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireless Competition Bureau

²² Request for Waiver at 2.

²³ See *supra*, note. 15.

²⁴ *Columbia Millimeter Communications, LP*, 14 FCC Rcd 2782, para. 10 (1999).

²⁵ See SLD website, <<http://www.sl.universalservice.org/funding/>> (“Each wave of letters will be mailed to applicants on Friday. The following Monday a list of recipients in each wave are posted here under the State Funding Reports area.”).